

(2) **ALJ's Analysis**

Because the ALJ has concluded that paging and ISP calls to ASAP's Lockhart, Kyle, and Fentress NXXs do not qualify for ELCS, the ALJ also concludes that CenturyTel is not in violation of the Commission's order in Project No. 13267, which established ELCS between San Marcos and Lockhart, Kyle, and Fentress. Other than charging toll for calls to these NXXs, there is no evidence even to suggest that CenturyTel has violated any other provisions of the Order.

The ALJ further concludes that CenturyTel has not violated its tariff. The tariff provides for ELCS service to the Lockhart, Kyle, and Fentress *exchanges*. ASAP and Staff's arguments assume that calls to ASAP's NXXs are terminated within the exchanges "associated" with the NXXs. But, as discussed in detail previously, paging and ISP calls to ASAP's NXXs terminate for retail rating purposes at ASAP's switch and terminal in *Austin*. They do not terminate to the exchanges with which the NXXs are associated, and they do not terminate within any exchange within CenturyTel's ELCS territory, as described in CenturyTel's tariff. Therefore, the ALJ concludes that CenturyTel has not violated its tariff.

3. **Preliminary Order Issue No. 3**

Did CenturyTel properly switch the trunking arrangement from ELCS to intraLATA toll?

a. **Parties' Positions**

ASAP states that CenturyTel did not actually change trunking arrangements when it required its users to dial 1+ and pay toll in order to call ASAP's Lockhart NXX. Instead, ASAP asserts that CenturyTel merely changed the translations in its end office switch to block 7-digit dialing and

require 1+ dialing.¹⁴⁴ Thus, there was no change in the trunks over which the traffic traveled from CenturyTel's end users to ASAP's NXXs.

ASAP states that CenturyTel may prefer to use "toll" trunks only for toll traffic, but the Commission rules do not provide that the route a call takes determines retail rating for the call.¹⁴⁵ Otherwise, CenturyTel could choose to route calls between next door neighbors over "toll trunks" and thereby charge toll for a local call, or CenturyTel could route ELCS calls over "toll" trunks in order to circumvent ELCS orders, which Staff-witness Kelsaw agreed would not be proper.¹⁴⁶ ASAP emphasizes that retail rating of a call cannot be determined by the routing of the call, or by the specific trunks a carrier chooses to use to deliver the call. Instead, ASAP maintains that the tariff governs, and CenturyTel's tariff provides that calls to the Lockhart exchange are "local," with no exception for calls that "go over toll trunks."

CenturyTel does not directly address this question. Instead, it merely restates its argument that neither the Commission nor the FCC have recognized a virtual NXX for the purpose of rating a call. It adds that a VNXX is ASAP's only claim that calls to its numbers are calls to an ELCS exchange but argues that Virtual NXXs are not recognized for this purpose.¹⁴⁷

b. ALJ's Analysis

Although the record is not entirely clear, it appears that CenturyTel did not actually "switch trunking arrangements." As the ALJ understands the situation, a dedicated trunk connects the

¹⁴⁴ Int. Hng Tr. at 212-3. ASAP argues that it is action that resulted in the violation of the ELCS order and CenturyTel's tariff. Calls that previously had been dialed as local (7-digit), and retail rated as local, had to be dialed 1+ (long distance) and incurred a long distance charge.

¹⁴⁵ ASAP Exh. 43 (Goldstein Reb.) at 11, 23.

¹⁴⁶ Tr. at 743-44.

¹⁴⁷ CenturyTel Reply Brief at 30.

CenturyTel San Marcos exchange and the SWBT Lockhart exchange for purposes of ELCS. But calls to ASAP's switch in Austin cannot be completed over that trunk, so the ALJ assumes that CenturyTel never actually used that trunk for calls to ASAP's Lockhart NXX. Instead, these calls were always routed by CenturyTel over the "toll trunk" between San Marcos and the Greenwood tandem in Austin. Initially, CenturyTel sent calls to ASAP's POI over that trunk with 7-digit dialing and without charging toll. Then, CenturyTel changed the translations in its switch to require 1+ dialing and imposed toll on its customers. The ALJ concludes there was not an actual "change in trunking arrangements" in the sense that CenturyTel did not actually change the trunks that were being used.

Although CenturyTel characterizes the trunk between San Marcos and the Austin Greenwood tandem as a "toll trunk," such characterization of the trunk, in itself, does not affect the proper rating of calls made over the trunk. However, because the ALJ has found that CenturyTel is entitled to charge toll for the calls to the ASAP NXXs in question, the ALJ concludes that CenturyTel has not taken any improper action in connection with this issue.

4. Preliminary Order Issue No. 4

Is CenturyTel being charged for the use of that trunk? If so, by whom and at what rate?

a. Parties' Positions

ASAP states that CenturyTel is not being charged for use of any trunks that carry calls to ASAP's Kyle, Fentress, or Lockhart NXXs. It emphasizes that CenturyTel presented no evidence that it has been charged, noting CenturyTel-witness Susan Smith testified that she was not aware of any such charges.¹⁴⁸ In fact, she indicated that CenturyTel and SWBT bore their own costs for the

¹⁴⁸ Tr. 416-77

facilities up to the meet-point and used bill and keep for ELCS traffic.¹⁴⁹ While Ms. Smith expressed concern that SWBT may ultimately bill CenturyTel, it has not done so to date.

Further, ASAP contends that SWBT is entitled to be paid only once for the transit service it provides when a CenturyTel end user calls an ASAP end user. Under the *TSR* decision, CMRS carriers are responsible for transit costs, and ASAP states that it has made arrangements with SWBT to provide this transit service.¹⁵⁰ ASAP states that CenturyTel is not responsible for transit, that CenturyTel should not have any obligation to SWBT,¹⁵¹ and that ASAP does not oppose the entry of an order that requires CenturyTel to deliver traffic to the SWBT at the meet-point with the understanding that it incurs no cost responsibility to SWBT for doing so.

CenturyTel accuses ASAP of twisting the facts by arguing that the arrangement between SWBT and CenturyTel for *ELCS traffic between San Marcos and Lockhart* is "bill and keep"; and, therefore, that ASAP should be allowed to use CenturyTel's and SWBT's *toll trunks between San Marcos and Austin* on a "bill and keep" basis. CenturyTel states that the testimony does not support ASAP's characterization but instead reveals that SWBT intends to charge either ASAP or CenturyTel for use of its facilities in transporting calls from San Marcos to Austin. CenturyTel cites testimony by its witness, Ms. Smith, that SWBT has asserted the right to bill CenturyTel for this toll trunk traffic,¹⁵² although she did not know if a bill actually had been sent because she is not the person who would receive it.¹⁵³

¹⁴⁹ Tr. 304-05, 324, 439-44, 453. ASAP states that the arrangement is bill and keep, so CenturyTel's ELCS costs are recovered from its end users. Tr 324, 461.

¹⁵⁰ ASAP states that its informal arrangement with SWBT is that ASAP will not charge SWBT for transport and termination of calls that originate on SWBT's network, even though ASAP claims it is entitled to do so under the FCC's rules. In return, SWBT provides transit to ASAP for calls that originate on other carriers' networks without charge. Tr. at 38, 111, 163, 201, 259-61, 277-78, 279-82, 812, 854, 877.

¹⁵¹ Tr. 420.

¹⁵² Tr. 416.

¹⁵³ Tr. 417.

CenturyTel also states that ILECs compensate each other for intraLATA toll traffic routed between them on the basis of long-distance access charges, pursuant to Commission order.¹⁵⁴ Consequently, CenturyTel states that if it is obligated to transport calls to ASAP's NXXs in Austin over toll trunks, thereby being treated as the IXC for these calls, then CenturyTel would be obligated to pay SWBT transport and termination at intrastate switched access rates. But CenturyTel argues that ASAP is actually an IXC for these calls because it sells in-bound, toll-free interexchange service to ISPs in Austin. CenturyTel proposes to treat ASAP as an IXC for these calls and allow ASAP to arrange its own transport—or CenturyTel will transport the calls itself as the IXC on behalf of its own retail end user, and then bill the end user a toll charge.

CenturyTel rejects ASAP's suggestion that it be ordered to deliver traffic to the meet point with SWBT but not be obligated to pay transport beyond this point, because this proposal does not solve the entire issue. CenturyTel states that, *as an IXC*, ASAP would be responsible not only for transport from the San Marcos meet point to the terminating tandem (Austin-Greenwood), but it also would be responsible for switching and transport from the originating San Marcos end office to the San Marcos tandem, for the San Marcos tandem switching (to the outbound toll trunk), and for transport from the San Marcos tandem to the meet point. CenturyTel complains that ASAP has not agreed to pay these charges associated with getting the call to the meet point. Thus, CenturyTel argues that ASAP's offer does not put ASAP in the same position as other IXCs because other IXCs would pay access charges to CenturyTel for these additional functions. Finally, CenturyTel complains that ASAP's proposal is insufficient because it does not correct the mis-assignment of numbers to "non-resident" customers.

In summary, CenturyTel maintains that if calls to ASAP's NXXs were recognized as toll, and if CenturyTel performed the function of the IXC on these calls, CenturyTel would be obligated as the IXC to pay SWBT access charges and could recover those costs by a toll charge to its end

¹⁵⁴ CenturyTel cites *Compliance Proceeding for Implementation of the Small and Rural Incumbent Local Exchange Carriers Universal Service Plan*, Docket No. 18516, Final Order at 15 (Jan. 13, 2000).

user. Alternatively, if ASAP performs the function of the IXC and receives these calls at the San Marcos boundary, then CenturyTel argues that it may charge ASAP originating access and transport to the meet point boundary.

b. ALJ's Analysis

There is no evidence in the record that CenturyTel is actually being charged for use of the trunk between San Marcos and the Greenwood tandem in Austin for traffic to ASAP's NXXs. Likewise there is no evidence of the rate that could be charged for use of the trunk. The parties' arguments go beyond the questions asked in Issue No. 4. The ALJ does not find it necessary to rule on those arguments and suggestions, except that the ALJ does not believe it would be appropriate to include an ordering paragraph that CenturyTel is not liable to SWBT for transport costs because SWBT is not a party to this proceeding and has not had an opportunity to be heard on this question. Therefore, the ALJ finds that CenturyTel is not being charged for use of the trunk delivering calls to ASAP's NXXs and there is no evidence on what rates could be charged for that service.

5. Preliminary Order Issue No. 5

Whose responsibility is it to complete the ELCS call?

a. Parties' Positions

ASAP states that when a CenturyTel end user calls an ASAP customer, CenturyTel has the responsibility to route the call according to the routing instructions in the LERG. That involves handing the call off to SWBT, since ASAP's "home tandem" is SWBT's Greenwood tandem.

SWBT provides transit service, hands the call off to ASAP, and then ASAP has the responsibility to complete the call to its customer. ASAP suggests that "completion" is akin to "transport and termination" as defined by 47 C.F.R. 51.701(c) and (d).¹⁵⁵

CenturyTel states that routing the call according to the LERG instructions results in routing of these calls to Austin, but Austin is not within the local calling area of San Marcos. Thus, routing calls pursuant to ASAP's LERG instructions results in these calls being routed outside CenturyTel's local calling area and not completing to a customer within an ELCS exchange. Therefore, CenturyTel believes it may treat this traffic as toll calls rather than ELCS.¹⁵⁶

As noted above, Staff contends that ASAP has not yet taken the appropriate actions to arrange for ELCS to its Lockhart-associated 512-384 numbers. Under these circumstances, Staff states that SWBT is obligated to "receive" such calls from CenturyTel and provide transit service, subject to SWBT's right to charge ASAP for that transit service. But Staff does not directly address who is responsible for terminating an ELCS call.¹⁵⁷

b. ALJ's Analysis

As a general rule, the ILECs and the CLECs (who have made appropriate arrangements) are responsible for terminating ELCS calls in their respective exchanges within the ELCS territory. However, ASAP is not a CLEC and calls to ASAP's NXXs are not eligible for ELCS. Therefore, the ALJ concludes that ASAP is responsible for completing calls (which are not ELCS) to its ISP and paging customers.

¹⁵⁵ Tr. 542.

¹⁵⁶ CenturyTel Reply Brief at 32-33.

¹⁵⁷ Staff Initial Brief at 4.

6. Preliminary Order Issue No. 6

Are CenturyTel's actions anticompetitive in violation of PURA § 52.108(3)?

a. Parties' Positions

In ASAP's opinion, both CenturyTel's prior actions and its positions in this case are anticompetitive. It complains that CenturyTel is attempting to improperly charge its own users a toll when they call ASAP's users; or alternatively, that CenturyTel is attempting to charge ASAP toll or access charges through a "buy down" agreement. Yet, ASAP notes, when a CenturyTel user calls a SWBT or Verizon user in the exchanges in question, CenturyTel does not impose a toll or otherwise charge SWBT or Verizon.

ASAP contends that CenturyTel or an affiliate provides a service to ISPs that competes with ASAP's services;¹⁵⁸ consequently CenturyTel has the incentive to raise the cost to ASAP's ISP customers by imposing higher costs on ASAP. In addition, ASAP points out that CenturyTel (or an affiliate) previously provided paging services, at least at the time the hearing on interim relief was held in this case.¹⁵⁹ ASAP further argues that the actions CenturyTel took, and the positions it is urging in this case, are anticompetitive because they would hinder or completely prevent the competitive alternatives made available by ASAP and its ISP clients. In particular, ASAP states that if callers in San Marcos must pay toll, they will not call ASAP's ISP customers' NXXs that should be rated local to San Marcos.

¹⁵⁸ Tr. 108-09. ASAP provides information services that it claims compete with those provided by CenturyTel's ISP offerings. Int. Hng. Tr. at 47, 155; ASAP Exh. 7.

¹⁵⁹ Int. Hng. Tr. at 159, 207; ASAP Exh. 8.

ASAP notes that PURA § 53.003(c) prevents CenturyTel from granting unreasonable preferences to or unreasonably discriminating against any of its end use customers. It also cannot maintain unreasonable differences in rates between localities. Similarly, § 55.005 prohibits CenturyTel from granting unreasonable preferences to any end user, or subjecting any end user to an unreasonable prejudice or disadvantage. In this case, ASAP complains that CenturyTel seeks to impose toll charges on its own end users when they call ASAP customers with Kyle, Fentress, and Lockhart numbers, but not impose toll charges when they call Verizon's Kyle or Fentress numbers, or SWBT's Lockhart numbers. ASAP argues that this difference in treatment based on the identity of the called party violates both §§ 53.003 and 55.005, and therefore allows the Commission to enter an order under § 52.108 to prohibit these practices.¹⁶⁰

ASAP contends that § 55.006 similarly prohibits CenturyTel from discriminating against ASAP or engaging in any practice that restricts or impairs ASAP's ability to compete. According to ASAP, the practice of imposing toll on CenturyTel end users that call ASAP's Kyle, Fentress, or Lockhart numbers (or requiring ASAP to "buy down" the toll), even though CenturyTel does not impose toll when its own end users call Verizon's Kyle or Fentress numbers or SWBT's Lockhart numbers, discriminates against ASAP and restricts its ability to compete. ASAP complains that no one will buy its service because very few people will call toll numbers when other toll free numbers are available. In short, ASAP argues that lack of dialing parity puts competing providers and their users, at a distinct disadvantage, which is the reason the federal Act expressly requires local dialing parity.¹⁶¹

¹⁶⁰ ASAP Initial Brief at 34.

¹⁶¹ ASAP cites 47 U.S.C. § 153(15), which defines dialing parity: "The term 'dialing parity' means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)."

CenturyTel replies that the proposals it has offered to ASAP are not anticompetitive and would not damage ASAP's paging business. In CenturyTel's view, its offer to ASAP is no different than the wide-area calling plan ASAP has maintained for years with CenturyTel with the 512/222 numbers.¹⁶² CenturyTel also emphasizes that most (if not all) of ASAP's *paging* customers use the 512/222-XXXX wide-area numbers,¹⁶³ and it suggests that ASAP's long and continued use of the wide-area calling arrangement belies any claim by ASAP that a wide-area calling arrangement is prohibitively expensive. CenturyTel further states that it has offered ASAP several options to avoid a toll being charged to end users calling ASAP's paging customers. CenturyTel contends that these options are outlined in the *TSR* and *Mountain* cases and have been approved by the orders in those two FCC cases.¹⁶⁴

CenturyTel rejects ASAP's claims that CenturyTel violates PURA § 53.003(c) by treating ASAP's customers differently based on the *identity of the called party*.¹⁶⁵ Instead, CenturyTel argues that it treats ASAP identically to other carriers whose calls terminate in Austin; that is, based on the called party's physical location, not the *identity of their carrier*. CenturyTel indicates that its response would be the same if it were asked by Verizon or SWBT to transmit a call from San Marcos to a customer in Austin. Because CenturyTel has offered the same arrangements to ASAP that it offers to every other carrier, it argues that no violation of PURA § 53.003(c) has occurred.¹⁶⁶

¹⁶² Tr. 38

¹⁶³ Tr. 38-44; CenturyTel Ex. 6

¹⁶⁴ CenturyTel Reply Brief at 33.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

b. ALJ's Analysis

Because the ALJ has found that calls to ASAP's NXXs are not eligible for ELCS, the ALJ also concludes that CenturyTel actions are not anticompetitive. Instead, CenturyTel was authorized to charge its customers toll and it has offered ASAP alternative arrangements to "buy down" the toll charges or make other interconnection arrangements for ASAP. There was no evidence that ASAP has treated ASAP any differently than other telecommunications carriers.

ASAP complains that CenturyTel wants to impose toll charges on its customers when they call ASAP customers with Kyle, Fentress, and Lockhart numbers, but not impose toll charges when they call Verizon's Kyle or Fentress numbers, or SWBT's Lockhart numbers. The difference, of course, is that the retail rating of these calls as local is *not based on the number called* but on whether the call occurs within an ELCS area. Calls to Verizon's Kyle and Fentress *exchanges*, or to SWBT's Lockhart *exchange* are within the ELCS area, while calls to ASAP's NXXs are not within the ELCS area. Therefore, CenturyTel is entitled to retail rate the calls to ASAP's NXXs differently than calls to Verizon and SWBT's exchanges within the ELCS area, and no discrimination has occurred.

7. Preliminary Order Issue No. 7

Is CenturyTel in violation of the equal access dialing parity provisions in PURA § 55.009(c) and/or P.U.C. SUBST. R. § 26.275?

a. Parties' Positions

ASAP notes that the cited PURA section and Substantive Rule pertain to intraLATA *toll* dialing parity, as they both speak to "0+" and "1+" dialing parity. Thus, ASAP states that CenturyTel has not violated these sections because these calls should be rated as local, but these

rules do not apply to *local* dialing parity issues. ASAP points out that the Commission's rule concerning local dialing parity is P.U.C. SUBST. R. 26.272(d)(2)(A),¹⁶⁷ but ASAP contends that this rule does not apply because ASAP is not a CLEC (CTU) to which the rule applies.¹⁶⁸

ASAP does contend, however, that the FCC's local dialing parity rule applies, and it argues that CenturyTel has violated it because CenturyTel did not permit its users to "dial the same number of digits to make a local telephone call" *because* of the "identity of the . . . called party's telecommunications service provider."¹⁶⁹

CenturyTel simply states that the dialing parity rules do not require CenturyTel to treat ASAP's toll calls as ELCS.¹⁷⁰

b. ALJ's Analysis

The ALJ finds that CenturyTel did not violate the equal access dialing parity provisions in PURA § 55.009(c) and/or P.U.C. SUBST. R. § 26.275. As noted by ASAP, these rules do not apply to local traffic. Therefore, if the calls to ASAP's NXXs were considered local under ELCS, as ASAP contends, the rules would not apply. However, the ALJ has concluded that the calls are not local so the rules are relevant. But there simply is no evidence that CenturyTel violated the rules with respect to long distance dialing. Therefore, the ALJ concludes that CenturyTel did not violate

¹⁶⁷ That rule states: "Interconnecting CTUs shall ensure that customers of CTUs shall not have to dial additional digits or incur dialing delays that exceed industry standards in order to complete local calls as a result of interconnection."

¹⁶⁸ ASAP Initial Brief at 35.

¹⁶⁹ [47 C.F.R.] Sec. 51.207 Local dialing parity.

A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

¹⁷⁰ CenturyTel Initial Brief at 14

with respect to long distance dialing. Therefore, the ALJ concludes that CenturyTel did not violate these equal access dialing parity provisions.

V. Conclusion

In conclusion, the ALJ finds that ASAP does not provide any services that require it to obtain certification from the Commission. However, ASAP is required to register with the Commission for the landline services it provides to ISP providers. The ALJ also finds that calls from CenturyTel customers in San Marcos to ASAP's Lockhart, Kyle, and Fentress NXXs do not qualify for ELCS; therefore, CenturyTel may charge its end-users toll for such calls. As a result, the interim order granting emergency relief to ASAP and requiring CenturyTel to rate such calls as local ELCS calls should be set aside, and CenturyTel should be allowed to impose toll and require 1+ dialing for calls from San Marcos to the ASAP NXXs in dispute. However, the ALJ does not recommend recovery of toll lost by CenturyTel for such calls made while the Order was in effect. During that time, the Order made the calls toll-free for CenturyTel's end-users placing the calls. The ALJ also emphasizes that these recommendations deal only with retail rating for these calls and do not necessarily apply to interconnection or intercarrier compensation issues not involved in this proceeding.

VI. Findings of Fact and Conclusions of Law

A. Findings of Fact

Parties

1. ASAP Paging, Inc. (ASAP) is a Commercial Mobile Radio Service (CMRS) provider that is licensed by the U.S. Federal Communications Commission (FCC) to provide wireless paging services in several areas in Texas. ASAP does not hold any certification or registration with the Public Utility Commission of Texas (Commission).

2. CenturyTel of San Marcos, Inc. (CenturyTel) is an incumbent local exchange carrier (ILEC) that provides local exchange service within the San Marcos, Texas, exchange.

Procedural History

3. On April 2, 2002, ASAP and San Marcos Internet, Inc. filed a complaint against CenturyTel and a request for expedited ruling concerning CenturyTel charging long-distance toll to CenturyTel end-users for calls to ASAP's customers. ASAP contends that such calls should be rated as local under Extended Local Calling Service (ELCS).
4. On April 5, 2002, ASAP and San Marcos Internet filed an amended complaint to correct factual errors and to remove San Marcos Internet as a party.
5. On April 9, 2002, the Commission's Policy Development Division referred the case to the State Office of Administrative Hearings (SOAH) for a contested case hearing and a proposal for decision, if necessary.
6. On April 15, 2002, SOAH Administrative Law Judge (ALJ) Thomas H. Walston held a preliminary hearing to consider a request by ASAP for interim ruling and emergency action.
7. On April 18, 2002, ALJ Walston entered Order No. 3, granting ASAP's request for interim ruling and emergency action and requiring CenturyTel not to require 1+ or 0+ dialing or to assess toll charges for calls made from CenturyTel's San Marcos exchange to ASAP's 512-384 NXX.
8. On May 8, 2002, the Commission issued its Preliminary Order outlining the issues to be addressed.
9. October 10-11, 2002, and November 12-13, 2002, ALJ Walston held a hearing on the merits.

10. On January 21, 2003, ASAP, CenturyTel, and Staff filed their initial post-hearing briefs.
11. On February 18, 2003, the parties filed their reply briefs and the record closed.

ASAP's Paging Business

12. ASAP has a Type 2A telecommunications end-office switch and a paging terminal located in Austin, Texas. The switch is physically interconnected to Southwestern Bell Telephone Company's (SWBT) Greenwood tandem switch in Austin, Texas.
13. ASAP only provides a one-way telecommunications service to its customers. ASAP does not provide its customers with flat rate residential and business local exchange telephone service, primary directory listings, tone dialing service access to operator services, access to directory assistance services, access to 911 service, the ability to report service problems seven days a week, or lifeline and tel-assistance services. Also, ASAP does not provide a service that connects customer premises within a single exchange, and it does not provide its customers access to interexchange carriers.
14. ASAP has not expressly "designated a calling path" in this case. Instead, it has only designated a single point of interconnection (POI) within the LATA (Local Access Transport Area), and the ILECs can route to this POI as they choose.
15. ASAP has a single POI in the Austin LATA, at SWBT's Greenwood tandem switch in Austin, Texas.
16. When a paging call is received at ASAP's Austin switch, the switch sends the call to ASAP's paging terminal that is co-located with the switch in Austin. This terminal is connected via the wireless spectrum to a number of paging transmitters (towers) located throughout central Texas and beyond. All of the paging transmitters "fire" (transmit) simultaneously when a

paging call is received, and a page can be received by a paging customer anywhere within the range of any of the transmitters.

17. ASAP owns paging terminals in the following locations: Austin, Smithville, Giddings, Bastrop, San Marcos, La Grange, Wimberley, Lockhart, Columbus, Hallettsville, Saturn, Sealy, Navasota, Bryan, Brenham, Georgetown, Buda, Rockdale, and Milano. An ASAP paging customer can receive a page if he/she is within the range of any of these transmitters regardless of the telephone number used to route the paging call. For example, a paging customer traveling in Bryan, Texas, but having a Kyle central office code (NXX) telephone number, may receive a page dialed to his Kyle number transmitted to him from the paging transmitter in Bryan.
18. ASAP has a paging transmitter in Lockhart but has no transmitter in the Kyle or Fentress exchanges. There is no landline connection between San Marcos and ASAP's Lockhart transmitter. Instead, all pages are directed to this transmitter by radio signal from ASAP's paging terminal in Austin, or from a satellite to a satellite dish located at the transmitter.
19. ASAP's paging terminal may send a signal via the Internet to a satellite service in Chicago, Illinois, which in turn sends a wireless signal to ASAP's paging transmitters, and to paging transmitters nationwide if the paging customer selects such a coverage plan.
20. Because all of ASAP's paging transmitters fire simultaneously, and because the wireless paging communication is one-way to the pager, it is not possible to determine the geographical location where a wireless paging call is received by an ASAP paging customer.
21. In addition to the NXXs at issue in this case, ASAP has had in place for a number of years a wide-area calling arrangement with SWBT and CenturyTel that uses a 512/222 NXX. ASAP's 512/222 numbers are used exclusively for paging traffic; no ASAP ISP customers use these numbers. At the time of hearing, a majority of ASAP's paging customers used the

512/222 NXX. This reverse toll billing arrangement allows calls from San Marcos to ASAP's terminal in Austin to be made without the assessment of a toll charge to the caller.

ASAP's Service to Internet Service Providers

22. In addition to paging service, ASAP provides telephone numbers and in-bound calling service to select Internet Service Providers (ISPs) on a private, contractual basis.
23. The service provided by ASAP to its ISP customers connects the ISPs to the public switched telephone network (PSTN) in order to receive modem calls from their customers seeking access to the Internet. ASAP's service to ISP customers does not allow the ISPs to place outbound telephone calls or to connect to inter-exchange carriers (IXCs).
24. ASAP's service to its ISP customers conveys, transmits, or receives communications wholly or partly over a telephone system.
25. The service provided by ASAP to ISPs is individually negotiated and is not offered to the public at large or even to a large number of ISP customers.
26. When a call to an ASAP ISP customer comes into the SWBT's Greenwood tandem, the call is sent to ASAP's switch over landline interconnection trunks between SWBT and ASAP. When ASAP's switch receives the call, it routes the call over wireline connections to the ISP customer, who is either co-located at ASAP's Austin switch premises or has transport facilities at ASAP's Austin location to carry the traffic to its own facilities.
27. ASAP's service to its ISP customers occurs entirely within the State of Texas.
28. Telecommunications received by ASAP's ISP customers over ASAP's facilities are placed by the ISPs onto the Internet and generally continue to webpages and websites located in other states or countries.

29. Calls to ASAP's ISP customers are not routed through and do not use any federally licensed CMRS wireless spectrum or mobile station.
30. The service ASAP provides to its ISP customers is not provided to ASAP's paging customers, and it is not directly related or supplemental to ASAP's CMRS paging service.
31. ASAP's contract with the ISPs requires all traffic to terminate at the ISP's location at the ASAP Austin switch and prohibits such traffic from terminating elsewhere on the PSTN.
32. When a telephone call is placed to an ISP for purposes of accessing the Internet, the ISP is the "called party" from the end-users perspective and for retail rating the call to the end-user.

ASAP's NXXs

33. The three numbering plan area (NPA) NXX codes at issue in this proceeding are codes that ASAP obtained as a licensed CMRS paging carrier. ASAP has designated the NPA/NXXs in the Local Exchange Routing Guide (LERG) as assigned to exchanges having ELCS with the San Marcos exchange: 512/265 (registered in the LERG as rate centered on the Fentress exchange); 512/384 (registered in the LERG as rate centered on the Lockhart exchange); and 512/580 (registered in the LERG as rate centered on the Kyle exchange).
34. CenturyTel is the ILEC for the San Marcos exchange, SWBT is the ILEC for the Lockhart exchange, and Verizon Southwest is the ILEC for the Kyle and Fentress exchanges.
35. ASAP assigns telephone numbers to its paging and ISP customers without regard to whether the customer is physical located within the exchange to which the NXX is associated.
36. ASAP's switch and paging terminal are not located in an exchange that is ELCS to CenturyTel's San Marcos exchange.

37. ASAP does not use these NXXs to route an incoming page to a specific transmitter located in the exchange to which the number is nominally assigned. Rather, all transmitters "fire" simultaneously throughout ASAP's territory, or even nationwide, depending on the paging plan selected by the ASAP customer.
38. There is no geographical correlation between the exchanges with which ASAP has associated its NXXs and the location where a paging customer using an ASAP-supplied telephone number receives a paging call.
39. ASAP has requested that calls to these NXXs be routed from customers in the CenturyTel San Marcos exchange to ASAP's switch located in Austin but be rated as if they were ELCS calls to the Kyle, Lockhart, and Fentress exchanges.
40. At the time of the hearing, ASAP had no paging customers assigned to either its Kyle or Fentress NXXs. Only ASAP's ISP customers have been assigned those NXXs.
41. Based on minutes of use, the overwhelming majority of calls to the ASAP's NXXs at issue are calls to ASAP's ISP customers in Austin, not to ASAP's paging customers.
42. From October 2001 until April 1, 2002, CenturyTel delivered calls toll-free to the ASAP NXXs in dispute. Beginning April 2, 2002, CenturyTel changed its switch translations so that callers from San Marcos had to dial 1+ or 0+ to call ASAP's NXXs, and CenturyTel began charging its end-users toll for such calls. The ALJ entered an interim order on April 18, 2002, requiring CenturyTel to cease requiring 1+ or 0+ dialing to call these NXXs and to cease toll for such calls, pending a final ruling in this case.

Extended Local Calling Service (ELCS)

43. *Petition of Lockhart Exchange for Expanded Local Calling Service to the San Marcos, Luling, Martindale, Lytton Springs, Dale, Kyle, and Buda Exchanges, Pursuant to SUBST.*

R. 23.49(c), Order No. 8 (Mar. 9, 1995) establishes ELCS between the San Marcos exchange and the Kyle, Fentress, and Lockhart exchanges. Under this order, a call from CenturyTel customers in the San Marcos exchange to parties in the Kyle, Lockhart, or Fentress exchanges are retail rated as a local call to the calling party. CenturyTel has made the interconnections and provides all services required by that order.

44. Under CenturyTel's tariffs, calls between the San Marcos exchange and the Lockhart, Kyle, and Fentress exchanges are rated as ELCS local. Under CenturyTel's tariffs, calls between the San Marcos exchange and Austin are not ELCS, but are rated to the calling party as intraLATA long distance.
45. ELCS service between San Marcos and the Kyle, Fentress, and Lockhart exchanges is provided by means of direct end-office to end-office trunks between these exchanges. These ELCS trunks are owned and maintained by CenturyTel, Verizon, and SWBT, who are the Local Exchange Carriers (LECs) who jointly provide the ELCS service between their respective exchanges.
46. If calls from the San Marcos exchange to ASAP's NXXs were routed as other ELCS calls over the direct trunks to the Kyle, Fentress, and Lockhart exchanges, they would not complete because ASAP has no point of interconnection within any of these ELCS exchanges to receive calls to these NXXs.
47. SWBT objects to using the current ELCS trunk between San Marcos and Lockhart for calls from CenturyTel's San Marcos customers to ASAP customers using a number from ASAP's Lockhart NXX.
48. When a CenturyTel customer located in San Marcos dials an NXX that ASAP has associated with Kyle, Lockhart, or Fentress, the only means for this number to reach ASAP's Austin switch is via a trunk between CenturyTel's San Marcos tandem switch and SWBT's Austin

- Greenwood tandem switch. CenturyTel and SWBT have designated this trunk as a "toll trunk."
49. SWBT and CenturyTel have established a "meet point" at the SWBT-owned "hut" on Wonder World Drive in San Marcos.
 50. CenturyTel is not being charged for use of the trunk between CenturyTel's San Marcos tandem switch and SWBT's Austin Greenwood tandem switch.
 51. All calls from the San Marcos exchange to the NXXs at issue are transported over intraLATA trunks to ASAP's paging terminal in Austin. These calls must be transported to ASAP's switch in Austin as ASAP has no physical facilities in either the Kyle, Fentress, or Lockhart exchanges to receive these calls.

B. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 1998 & Supp. 2003) (PURA) §§ 14.001, 52.003, and 53.001.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the conduct of this proceeding and to issue a proposal for decision, if necessary, pursuant to TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2002).
3. The U.S. Federal Communications Commission (FCC) has exclusive jurisdiction to regulate ASAP's Commercial Mobile Radio Service (CMRS).
4. ASAP's service to its paging customers is a CMRS service regulated by the FCC.
5. A service can be "incidental" to CMRS without using a mobile unit or the wireless spectrum.

6. ASAP's service to its ISP customers is not a CMRS service and is not "incidental" to ASAP's CMRS authority.
7. ASAP's service to its ISP customers is an intrastate service.
8. ASAP's service to ISPs is an intrastate component of a jurisdictionally "mixed" telecommunications / information service that utilizes both intrastate and interstate services and facilities.
9. The Commission may regulate the intrastate component of a jurisdictionally mixed telecommunication service so long as it does not thwart or impede a federal policy.
10. ASAP's service to its ISP customers is not "basic local telecommunications service" as defined in PURA § 51.002(1).
11. ASAP's service ISPs is not "local exchange telephone service" as defined in PURA § 51.002(5).
12. ASAP's service to its ISP customers is not "switched access service" as used in PURA § 54.001.
13. ASAP is not in violation of the certification requirements contained in PURA § 54.001.
14. ASAP's non-CMRS service to ISP providers includes conveying a communication partly over a telephone system, which qualifies ASAP as a "telecommunications utility" under PURA § 51.002(11).
15. As a telecommunications utility, ASAP is required to register with the Commission under PURA § 52.103 and P.U.C. SUBST. R. 26.107 for the services it provides to ISPs.

16. ASAP's FCC CMRS license does not exempt ASAP from registering with the Commission for ASAP's non-CMRS services to its ISP customers.
17. Requiring ASAP to register with the Commission will not thwart or impede any valid federal policy in connection with the interstate component of the jurisdictionally mixed telecommunication that occurs when customers of ASAP's ISP customers make a modem call to an ISP in order to connect to the Internet.
18. ELCS is created by PURA Chapter 55, Subchapter C. In order to be eligible for ELCS, the "petitioning central switching office must be located within 22 miles, using vertical and horizontal geographic coordinates, of the central switching office of the exchange requested for expanded local calling service" or the petitioning exchange must show that it shares a community of interest with the petitioned exchange.
19. ASAP's switch and terminal located in Austin, Texas, should be used as the termination point for calls to ASAP's paging and ISP customers using the NXXs at issue, for purposes of retail rating.
20. If calls from San Marcos to ASAP's NXXs are rated based upon the location of the ASAP paging terminal in Austin, the calls are not eligible for ELCS and should be rated as toll to CenturyTel end-use customers.
21. Calls from CenturyTel customers in the San Marcos exchange to ASAP customers using 512-265, 512-384, or 512-580 NXXs do not qualify for ELCS under PURA and the Commission's Substantive Rules.
22. ASAP may not designate the calling path the traffic takes before termination.
23. The "toll trunk" designation by CenturyTel and SWBT of the telephone trunk between San

- Marcos and SWBT's Greenwood tandem in Austin does not, in itself, affect the eligibility of a call passing over that trunk for ELCS treatment.
24. As an ILEC, CenturyTel is subject to the interconnection obligations of the federal Telecommunications Act and the PURA. These rules establish certain requirements with respect to both wireless carriers, such as ASAP, and wireline carriers.
 25. Federal law and the rules of the FCC do not prohibit CenturyTel from assessing its own customers a toll charge when they place a call to a CMRS paging customer that is otherwise a toll call.
 26. CenturyTel may charge its own customers toll charges for calls to CMRS paging customers when the call terminates outside the CenturyTel's local calling area.
 27. For purposes of retail rating, calls from CenturyTel customers in San Marcos to ASAP's paging customers terminate at ASAP's paging terminal in Austin, Texas.
 28. For purposes of retail rating, calls from CenturyTel customers in San Marcos to ASAP's ISP customers terminate in Austin, Texas, where ASAP delivers the calls to the ISP providers.
 29. Because ASAP cannot establish the physical location of its customers when a paging call is received, it is reasonable to designate ASAP's paging terminal as the termination point of a call to ASAP's NXXs at issue, for purposes of retail rating.
 30. ISPs are the "called party" for purpose of retail rating a modem call to an ISP for purposes of accessing the Internet. Such calls to ASAP's ISP customers terminate in Austin, which is not ELCS to the San Marcos exchange.
 31. Calls from CenturyTel's San Marcos customers to ASAP's paging and ISP customers using the NXXs at issue are intraLATA toll calls; they are not ELCS local calls.

32. Calls from CenturyTel customers in San Marcos to ASAP's paging and ISP customers using the NXXs in question are properly dialed using 1+ or 0+ and not as a local call.
33. CenturyTel is not in violation of the Commission's ELCS order in Project No. 13267.
34. CenturyTel is not in violation of its Texas General Exchange tariff which provides for ELCS rating of calls between San Marcos and the Lockhart, Kyle, and Fentress exchanges because calls to ASAP's NXXs do not terminate within those exchanges.
35. CenturyTel did not act improperly when it changed the translations in its switch to require 1+ or 0+ dialing for calls from the San Marcos exchange to ASAP's NXXs because such calls do not qualify for local rating under ELCS.
36. The incumbent exchanges, CenturyTel, SWBT, and Verizon, are responsible for completing ELCS calls to exchanges that are within the approved ELCS territory.
37. Calls to ASAP's NXXs are not ELCS, and ASAP has responsibility to complete calls to its switch.
38. CenturyTel's actions with respect to retail rating of calls from CenturyTel's customers in San Marcos to ASAP's NXXs at issue are not anticompetitive in violation of PURA § 52.108(3).
39. CenturyTel is not in violation of the equal access dialing parity provisions in PURA § 55.009(c) and/or P.U.C. SUBST. R. § 26.275.